

EXPORT CONTROL REFORM: CHALLENGES FOR SMALL BUSINESS? (PART II)

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THURSDAY, FEBRUARY 11, 2016

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,

Washington, DC.

The Committee met, pursuant to call, at 10:00 a.m., in Room 2360, Rayburn House Office Building. Hon. Steve Chabot [chairman of the Committee] presiding.

Present: Representatives Chabot, Huelskamp, Brat, Curbelo, Velázquez, Meng, Moulton, and Payne.

Chairman CHABOT. Good morning. I call this meeting to order.

I want to thank you all for joining us today for our Committee on Small Business hearing on the Export Control Reform Initiative (ECRI). This is part of our hearing series on the ECRI. Yesterday, the Subcommittee on Agriculture, Energy, and Trade held a hearing where members heard directly from small businesses and trade compliance specialists on their firsthand experiences with the new Export Control System. I will mention we heard some good things about the current status of the ECRI, and perhaps unsurprisingly, we heard some bad things. And now that we have identified some of the challenges America's small businesses face when navigating the Export Control System, I hope we can take the opportunity that this hearing presents to address some of these concerns and figure out just how the administration plans to better assist small businesses engaged in trade.

As a longtime member of the House Foreign Affairs Committee and current chair of the Committee on Small Business, international trade has continued to be one of the topics that I am very passionate about, and I will also note that I understand the importance of the United States Export Control System and the underlying implications for our national security goals, foreign relations, and economic growth. Defense materials and products and services that serve a civilian and military purpose, also known as dual-use items, should undoubtedly be scrutinized when they are leaving the country and being sold to a foreign buyer. However, small businesses should not carry the burden of navigating a complex Export Control System, and since the administration has moved to implement the ECRI, it looks like they agree.

As I mentioned, we heard yesterday from some small businesses directly engaged in the Export Control System. They all agreed that while the goal of improving the Export Control System is a good one, government agencies are asking too much of the exporters, particularly small business exporters. These businesses are

often discouraged from exporting due to their limited time and resources that cannot be redirected to navigating the complexities of the Export Control System. I recognize that, generally, the ECRI has been met with broad support from American businesses, and good or bad, change is hard. I believe there is a certain level of responsibility on the government to ensure that this transition does not overburden small businesses, and I am concerned with the government's somewhat lackluster outreach efforts.

Additionally, we have heard that the export control lists are not completely synchronized, and that is creating some confusion. There are also valid concerns about the long delays in the agency's licensing approval processes and the cumbersome paperwork requirements, so clearly, much work still remains to be done. I think we all look forward to hearing from our administration witnesses about what progress the ECRI is making in the simplification of export controls, but I am more interested in hearing about how the administration is alleviating pressures on small business exporters.

I want to thank you again and thank everyone for being here today, and I would now like to yield to the ranking member for her opening statement.

Ms. VELAZQUEZ. Thank you, Mr. Chairman, and thank you for holding this valuable hearing.

With small and mid-size firms accounting for 98 percent of U.S. exports, America's small businesses have a great stake in how our export licensing regulations function. Not only do small manufacturers stand to benefit as we improve this system, but entire regional economies rely on robust U.S. exports. In New York, for example, about 400 million tons of cargo move through the city's port system and volume is expected to increase 48 percent by 2040. Numbers like this make it clear that a well-run export licensing system is vital to sustaining and creating good jobs, especially in places like Brooklyn and New York City where local ports generate significant economic activity. There is a long history of restricting certain types of products for export from the United States, specifically those related to defense or items that have both military and civilian uses.

We all understand the importance of these regulations. It is vital to our national security and diplomatic relations that appropriate export control mechanisms are in place.

At the same time, this system has become increasingly cumbersome. As we have seen in many other instances, when federal requirements become overly complex, small firms suffer the most. Often, they do not have the same resources that larger competitors utilize to navigate these processes. These concerns were one driving force behind the administration's interagency review of the U.S. Export Control System. These changes are welcome, and so far we have heard positive feedback from the small business community. The 2010 reforms are an important example of the administration's working to reduce regulatory burdens on the private sector. It is clear from small business survey data that this review and these reforms are necessary. Fully three-quarters of businesses report time-consuming difficulties when trying to work with our Export Control System. More than half noted problems from dealing with multiple regulatory agencies. This should be no surprise. Seven de-

partments share jurisdiction over the export control process. Add to this a responsibility of companies to know exactly what components in their products are regulated by which department and you have a recipe for a serious bureaucratic mess.

These hurdles create challenges for even the most experienced, sophisticated exporters. For a small manufacturer who is looking to enter foreign markets for the first time, these difficulties may seem unsurmountable. I am particularly concerned that if our export control is not fully modernized, we will hinder growth among firms that show the greatest promise for innovation. We have heard entrepreneurs that manufacture wind turbines, solar panels, and energy efficiency devices are losing opportunities to foreign competitors due to our export licensing procedures. Similar programs are reported in other high technology and rapid growth sectors. This is distressing as these are the very same industries we are counting on for job creation in coming years.

In a few weeks, this committee will visit New York for a field hearing where we will hear from local manufacturers. During that session, I intend to ask our witnesses about their experience with U.S. export licensing controls.

Mr. Chairman, I think all of us share the goal of ensuring our export licensing procedures function effectively, protecting our diplomatic and national security interests, while also ensuring U.S. small businesses are not needlessly burdened. I believe this goal is something we can achieve by working together. In that regard, I thank our witnesses for being here and offering their insight.

With that, I yield back.

Chairman CHABOT. Thank you. The gentlelady yields back.

If Committee members have opening statements, I would ask that they be submitted for the record.

I will take just a moment to explain our lighting system for our witnesses. You are probably familiar with it, but we basically operate under the 5-minute rule here, and there is a lighting system to help you in that. The green light will be on for 4 minutes; the yellow light will come on to let you know you have about a minute to wrap up; and the red light, we would ask you to complete your testimony by that time, if at all possible. We will give you a little flexibility, but we would ask you not to abuse the process. And we operate under the same rules ourselves, so we limit ourselves to 5 minutes as well.

I would now like to introduce the panel today which sometimes is four witnesses; today, only two. Our first witness is the Honorable Kevin Wolf, Assistant Secretary of Commerce for the Export Administration at the Department of Commerce. Mr. Wolf was sworn in on February of 2010 and assists and advises the Under Secretary on the development of policies pertaining to Export Administration issues. And we thank you for being here.

Our other witness today is the Honorable Brian Nilsson, Deputy Assistant Secretary for Defense Trade Controls at the State Department. Mr. Nilsson was appointed to this position on October of 2015 and provides overall policy guidance regarding the transfer of defense technologies to other countries. And we thank you very much for being here.

And Mr. Wolf, you are recognized for 5 minutes.

STATEMENTS OF THE HONORABLE KEVIN J. WOLF, ASSISTANT SECRETARY OF COMMERCE FOR EXPORT ADMINISTRATION, BUREAU OF INDUSTRY AND SECURITY, U.S. DEPARTMENT OF COMMERCE; BRIAN NILSSON, DEPUTY ASSISTANT SECRETARY OF DEFENSE TRADE CONTROLS, BUREAU OF POLITICAL-MILITARY AFFAIRS, U.S. DEPARTMENT OF STATE

STATEMENT OF KEVIN J. WOLF

Mr. WOLF. Sure. Thank you, Chairman Chabot and Ranking Member Velázquez.

The purpose of export controls is to put a regulatory net over the export, re-export, and transfer of particular items, software, and technology to various destinations, end uses, and end users for a wide variety of foreign policy and national security reasons. If the exporters and re-exporters do not understand these rules and how to comply with them, then the national security and foreign policy objectives of the controls are not met. I want to thank you, this Committee and the members, for having hearings like this and helping bring attention to the topic to help us get the word out to enhance overall compliance. Thank you for that.

As with most areas of regulations, export controls are inherently complex. There are different items of different sensitivities. There are countries of different levels of concern. End uses and end users are of different concerns. Foreign policies and national security priorities change over time. Technologies evolve. What was once very advanced and sophisticated and spooky becomes quite widespread and commercial. Slightly different fact patterns and particular capabilities of an item can have very different outcomes. The rules that exist today are the result of decades of legislation and regulatory decisions made by hundreds of individuals that fit into a multilateral export control regime system of like-minded countries. These countries try to align their controls all in a system that tries to take into account the various equities of the law enforcement side, the export and economic security side, national security folks, et cetera. All of these equities are all pulled in together to make what is inherently a complex system.

In the extreme, there are two ways in which to have a radically more simple system. You can have a system that imposes controls on everything equally everywhere all the time, and therefore, there is not much analysis required in terms of what requires a license, where, and to what destinations, a system that does not require a license anywhere, anytime, except when a company is specifically told about it. The former, of course, would impose a massive regulatory burden on U.S. companies and require a tremendously larger U.S. export control system to be able to accommodate that one. The latter, of course, does not satisfy the national security or foreign policy objectives of why the controls exist in the first place.

What this Administration has tried to do since the President announced the Export Control Reform Initiative in 2009, and then as better laid out by Secretary of Defense Gates in the early part of 2010, is to modernize and update the system. This effort had really been tried and announced several times over the decades, but never really accomplished, seeks to take into account different lev-

els of sensitivity for different countries of control in order to increase interoperability with NATO and our other close allies.

The hearing yesterday was an example, by the way, of all the points that I just described. You had a manufacturer that was saying please do not control my item on the ITAR. Please allow me to have the regulatory flexibility of the Commerce Department regulations so I can stay competitive with my non-U.S. counterparts in this area and have fewer regulatory burdens. Then a freight forwarder saying it would be much easier if everything required a license everywhere and there were not country specific designations or differences and all items were treated equally all the time. Your panel yesterday was a good description of the inherent tension of export controls.

One of the things that we have done as part of the reform effort is to take into account the realities of the rules that have been in place for a couple of years. These are two pivot blocks. I heard the members like props, so I brought props that we have been using for a long time. But these two actually summarize this entire massive multiyear export control reform effort really quite well. All they do is hold brake assemblies together on large vehicles. One of these was developed, specifically modified for a military vehicle, and the other one was developed for a dump truck. They both serve exactly the same function, have exactly the same basic holes. The only difference is that this one is for metric because the Marines like a metric system and the dump truck people like a standard dimension.

Under the old system, prior to the reform effort, it was simple. This required a license everywhere, all the time, as a statutory requirement under the regulations of my friend over here, and if a French company were to buy this and install it into a fire truck, then that French company making fire trucks would forever need a license from his department as a statutory requirement everywhere that fire truck was exported. And so that created a disincentive under the old regulatory system. It was simple to apply for non-U.S. companies to buy relatively simple items largely made by small- or medium-size companies. The regulatory burden that would go along with something having once been originally modified for military application that has now found its way into widespread commercial applications created the disincentive. This one, designed for the dump truck, could be exported worldwide without any requirements except for the embargoed countries.

What we have done with the reform effort—and I have literally hundreds of thousands of examples I could have brought with me today—is to take items that are less sensitive and to no longer regulate them on the State Department list, but to move them over to the Commerce Department list. They are now relatively similar in control so that you do not have this regulatory burden that I was describing that creates a disincentive for non-U.S. companies to buy U.S. origin items for less sensitive military or for commercial applications.

Now, the upside of that is that there could be fewer regulatory burdens. The downside of that, as described yesterday, is now people have to go through and decide am I exporting a pivot block or

a sensitive foreign missile component and everything in between. That is where education and outreach and training is so critical.

The controls still exist for these items as military items to embargoed countries and for bad end uses and bad end users, which also adds to the level of burden in that sense. If a company is exporting this to France or England, the burden is less, but if it is to a country subject to an arms embargo or for bad end use, the burden is increased in making those determinations.

We have at BIS, Bureau of Industry and Security, an entire office that does nothing but education and outreach. We estimate that we were able to contact almost 100,000 individuals by one means or another. Last year, we conducted or held or participated in over 350 seminars. I, Kevin, the Assistant Secretary, answer every question that comes in to BIS about the export control rules and the reform on a free conference call that anybody can dial in to every Wednesday at 2:30. This has been a terrific benefit for exporters in that they can get answers to their questions free and of benefit to everybody else who may be dialing in.

Chairman CHABOT. Mr. Wolf?

Mr. WOLF. Yes.

Chairman CHABOT. I have to cut you off.

Mr. WOLF. Sure.

Chairman CHABOT. We will get around to you in the questions.

Mr. WOLF. Oh, I have just passed my 5-minute line.

Chairman CHABOT. You did. You went a little over the allotted time.

Mr. WOLF. I got really excited there.

Chairman CHABOT. You went over the allotted time, but you brought such excellent props that we are going to forgive you.

Mr. WOLF. I apologize. I was thinking I had 2 minutes left, so never mind. Thank you.

Chairman CHABOT. We will get around to you in the questions. Thank you very much.

Mr. Nilsson, you are recognized for 5 minutes.

STATEMENT OF BRIAN NILSSON

Mr. NILSSON. Great. Thanks very much.

Good morning, all, and Mr. Chairman and Ranking Member Velázquez and other members of the Committee. Thanks very much for having the hearing with us today. I have been working on the Export Control Reform Initiative since its inception. We are very enthusiastic about it, and we very much appreciate the opportunity to speak about it. We would not be where we are today, as far down the path in doing reforms, if it had not been with the help and assistance of a lot of people across the departments, and across Congress. This Committee helped us in partnering us with the Small Business Administration and others, so we very much appreciate the help and support that we have gotten to get as far as we have gotten so far.

ECR is, first and foremost, a national security review. It has three core objectives: better using our resources, improving interoperability with our allies, and bolstering the health and competitiveness of our industrial base, which includes the second and third tier suppliers, which are predominantly smaller and medium-size

businesses. The system that we had been operating under, the pre-ECR system, was based on a premise that the United States has exclusive ownership of all the technologies that we need for our industrial base and that we actually procured enough to where we sustain our industrial basis without the need for exports. That has changed, and so the reality is now that we do joint development programs with our allies and we do not procure enough, even among those for the items that we do procure, to be able to really sustain the health of the industrial base, particularly at the second and third tiers of supply.

And so we have been systematically going through a process so that we can make it easier for the small- and medium-size companies who constitute the second and third tiers of supply, so that they can actually do the aftermarket sales and support for the larger systems that we have already exported without the need for having to come in for individual licenses. The goal is to make sure that we maintain the health and competitiveness of our industrial base and to keep that manufacturing in the United States so that they are there when we need them for current and future national security needs.

The cornerstone of the effort that Kevin has referenced is really looking at the Department of State's Munitions List, USML. The USML is comprised of 21 categories of items. Pre-ECR, it was not really a list, per se. The categories listed broadly what end items were in a given category. For example, Category VIII controls aircraft, helicopters, drones, and then within that category, it also had very broad, nonspecific catchall language, and it said that we controlled anything specifically designed, adapted, modified, or configured for anything that is in this category. And so as a result of that, it created sweeping controls without prioritization. And so not only would I control a fighter aircraft on my list, I would control every part, every nut, every bolt, every screw, the seatbelt, the windshield wiper, the clips, all the things that I have now transferred over to Kevin, without prioritization. That is like Lucy and Ethel in the chocolate factory where the things are coming down the production line and we are not able to prioritize those items that warrant the greater scrutiny because we are spending so much time on all the lower level items. The reality is that we need to control them but we want to make them to be able to go more easily to our allies and make it easier for small- and medium-sized companies to be able to export.

What we have done is in 2012, using the aircraft example, we did over 22,000 export licenses just in that 1 of 21 categories on the Munitions List, and over 76 percent of those were for these unenumerated, unspecified items that are caught by this 'specifically designed, adapted, modified, or configured for any military use'. As a result of that, we have taken a 6-year, painstaking, interagency process led by the Department of Defense where we have actually opened every category and looked at what is inside each of these categories that provides the United States with the critical military intelligence advantage. And if it does not meet that standard, we should move it over to Kevin's list to make it eligible for export under more flexible authorities.

And so on aircraft alone, last year our licensing dropped to about 6,800 licenses, which is about a 70 percent drop from what we had seen pre-ECR. And instead of that unemunerated list specifically designed, adapted, modified, or configured for military applications, we now have a relatively short list of specific items that warrant control, and everything else is moved over to the Commerce list. We have seen an 83 percent reduction in licensing for the items that are like this that are now moved over to Kevin's jurisdiction.

Where we are in the effort now? We have completed the work on 18 of the—we have published proposed rules for 18 of the 21 categories on the list. Of those 18, we have published final rules for 15 categories, and so those have gone into effect. And we are doing this through a series of proposals and then final rulemaking so that the public has an opportunity to provide input, which has been instrumental in the work that we have been doing.

That leaves me with six more categories on my list. Three of those categories we have published in proposed form: for Category XII, which is night vision and thermal imaging cameras; Category XIV, toxicological agents; and then Category XVIII for directed energy weapons. Category XII and XIV are among the most difficult we have had. We have had interagency struggles over what the right controls have been for probably 15 to 20 years, and so we are working through those now. Based on the public input on Category XII, we are in the process of going out for a second pair of proposed rules because we did not quite get it right based on the industry's input. So we are redoing and moving forward with those now.

The prioritization now is to get Category XII out again. We are then working towards doing final rules for XIV and XVIII, for directed energy weapons and for toxicological agents. That leaves my final three categories, which are firearms, big guns, and ammunition. Those are next among the priorities, and we are turning to those next as we get these others out the door. We are committed to proceeding with finalizing our initial review of the entire USML by the end of this year, so we are looking at finishing or looking at having proposed rules for all six categories by the end of this year.

Other things I could talk about very briefly, we can talk about our IT infrastructure. I am happy to answer questions about that. Outreach and partnership, as I said at the out start, we would not have done this and not have gotten this far if it had not been for the instrumental input that we have gotten from everyone involved. Pre-ECR, the State Department did not do proposed rules. We claimed a foreign policy exemption. We were in charge and we published rules and the rules were the rules. Now what we do is we do proposed rulemakings. We do dialogue with industry, with our partners, with our allies, with the Congress. If we do not get it right, we put it out again for another proposed rulemaking.

This past year, we have participated in over 700 events where we do training and outreach. We have a dedicated team that is just answering questions from industry. We have done about 19,000 phone calls last year to answer questions. We did over 22,000 emails where we were answering and following up. We also have, everything that we do, facts, Q&As, we actually have decision trees

to help exporters walk through the regulations that we have on our website, on Kevin's website.

The administration has a single website where all the departments who are participants in this put everything they are including: our proposed rules, all the public comments that we receive. So it is very transparent. Industry can sign up for that and they can get e-notices so they know what is happening and when.

Chairman CHABOT. Thank you. I think we will get to the rest of your testimony maybe through the question process.

Mr. NILSSON. Okay, thank you.

Chairman CHABOT. Thank you very much for your testimony, and we are giving Mr. Wolf credit for his excellent props, and we will give you credit for an "I Love Lucy," reference. I think that is the first time since I have been chair. That is a great episode if you have not seen it, by the way, when Ethel and Lucy are trying to take care of the chocolate machine. It is a classic.

So, of course, this is a Small Business Committee, so most of our concerns are with reference to small business, and I will recognize myself for 5 minutes to get into some of those.

My first question would be—this would probably be more directed to you, Mr. Wolf—most industry experts seem to agree that export controls disproportionately impact small business folks. What effort is the administration making to help narrow the gap between larger and small business when it comes to navigating the Export Control System?

Mr. WOLF. Sure. There are two ways to approach that. One is from the structural regulatory changes we are making, and second, from the length and the type of outreach that we do. On the structural changes, it goes back to my pivot blocks. I mean, small and medium size companies, prior to the reform effort, if they were the maker of one of these types of items to export, as a military item, they would have been required to register with the State Department. They would have been required to pay fees. They would have been required to get purchase orders before every individual shipment. The foreign parties that bought these would be forever required to get permission from the State Department even when they were incorporated into commercial or other items for allied countries. They would have required these very lengthy manufacturing license agreements and technical assistance agreements in order to be able to transfer data or to do services overseas. They would have required permission to perform services on these items. There are requirements on importing these items back into the United States. There were precious few license exceptions available to be able to transfer these and related items and technology for repair or for government end users or for NATO countries. Under the reform effort, all of those burdens, all of that massive regulatory structure that I have just described—which is massive, trust me—for items that have moved over to our Commerce list after the six years of work that Brian was just describing, have disappeared.

So from the regulatory structural perspective, we have made massive changes to the requirements for trade largely with NATO and other friendly countries that have radically reduced the overall regulatory burden for primarily small- and medium-size countries. So that is baked into the system.

So when you bring about a change like that, whenever you go from something that forever before this required a license everywhere all the time and the small company never had to think about what country, what end use, what it was going into, just get a license for everything, that raises all the difficulties and the burdens described in the testimony presented to your panel yesterday and today. And that is where our education and outreach efforts come in. Every available resource that we have in our entire office is dedicated to nothing other than to conduct panels to go out and visit companies, to do online training resources, everything that we can think about to solve that.

Chairman CHABOT. Thank you.

Mr. NILSSON. Once the changes get baked in, then it becomes easier.

Chairman CHABOT. Let me move on to another—thank you.

As I had mentioned before, and as you are aware, one of our Subcommittee hearings met yesterday and we had some small business folks commentating and giving us their experience on this. And in the testimony that the Subcommittee received yesterday, we heard that some clients struggle with missing, incomplete, or contradictory definitions of underlying export principles. What effort is the administration making to address these issues? And either one of you are welcome to answer the question.

Mr. WOLF. You are going to love what we are going to publish here in the next couple of months because we have been, over the last couple of years, working on a large rule to largely harmonize all of the underlying and structural definitions between my set of regulations and his set of regulations. The final rule will be out in the next few months, and we have been making changes in that regard. The two sets of regs evolved differently in different orbits for the last 40, 50 years, and they are either Latin or Greek. I completely acknowledge and agree with everything that was said yesterday about the difficulties in comparing between the two sets of regs, but in about two or three months, you are going to see a very large regulation that is going to take the same words, the same phrases, and largely the same structures between his regs and my regs, and to the extent that they warrant being made the same, will be made the same. And this all leads to the ultimate objective, which neither Brian nor I got—actually, why do you not do the ultimate objective since I have been talking so much about where we are leading.

Mr. NILSSON. Yeah. The ultimate objective of this is all the work that we are doing is a prerequisite, a prerequisite to the eventual nirvana in export controls where our agencies would merge and we would have a single export control agency that has a single export control list. I mean, actually, in the early days of ECR, at the request of Representatives Berman and Ros-Lehtinen, the GAO did an assessment and did a comparison of our five closest allies for how are their Export Control Systems are structured and how it compared with our vision of a single licensing agency, a single control list, a single primary enforcement agency, and a single IT system to rule them all. The answer was that everyone else and our closest trading partners, the British, the Canadians, the Japanese, the Swedes, and the—

Mr. WOLF. Other friendly countries.

Mr. NILSSON. One other—I forget—had all separately come to the same common sense conclusion. All of the work that we are doing is tailored toward that because all the stuff, while I gave him my pivot blocks, eventually we should be able, the way we have structurally done this, to merge the list together to where these will still be treated as less sensitive. It will be easier to export those. For the items that are the most sensitive items that provide us with a critical military intelligence advantage, they would still be warranting the level of control that I am required to do by statute on the Arms Export Control Act.

Chairman CHABOT. Thank you. Thank you. My time has expired.

The ranking member is recognized for 5 minutes.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. You know, we hold a lot of hearings on this Committee and focus on improving the climate for small businesses to really thrive. And I can say today that I like what I hear. It sounds good. Execution, of course, is very important, and to that point I would like to address my first question to both of you. While coordination and cooperation among agencies is a primary goal for improving the system, we heard some complaints from freight forwarders about the role CBP has in this process and how delays due to their own confusion hinder their companies. What kind of outreach and education are you doing for government employees to expedite approvals and, of course, to reduce confusion?

Mr. WOLF. That was a terrific comment yesterday. We did, at BIS, a whole tour of several Customs and Border Protection offices over the course of last year, but there is always a great deal of turnover and it is a very large agency, so that comment yesterday and your comment just now reminds us that we need to make sure to keep doing that over the course of this year and follow-on years. When you have any sort of change that is as massive as what we have done, you have to spend a lot of time educating not only the exporters, but other parts of the U.S. Government so that they are comfortable as well. Because, remember, the system had been baked in for about 40 or 50 years, and given the absence of a lot of definitions on key terms, exporters and government officials had largely made up their own rules. So what we are trying to do is shake things up to get everybody on the same page. And your point is very well taken. I can give you the numbers later on the number of Customs officials that we educated and trained last year, and sometime over the course of 2016, we will be doing the same, but your comment is a reminder that we need to keep doing that on a very regular basis.

Ms. VELAZQUEZ. Thank you. Mr. Wolf, the BIS requested \$115 million for Fiscal Year 2016, an increase of over \$12 million over the Fiscal Year 2015 enacted level, and received \$112.5 million. Is any of this additional funding spent on better assisting small business exporters in any way?

Mr. WOLF. Well, not yet. It has only been about a month since the budget has come into being. And it has gotten us back to the level of giving us enough resources to be able to fill many unfilled positions, some of which were in our education and outreach office.

So absolutely, a significant portion of that will be to education and outreach. Yes, thank you.

Ms. VELAZQUEZ. And Mr. Wolf, yesterday's panel of private sector witnesses explained that many businesses under the ITAR system are now getting lost in the ECR system and experiencing significant complications. Are you doing anything to ease their transition to operating under a new system?

Mr. WOLF. In two ways. Structurally, what we have done is that we have had significant grandfathering periods of several years for companies to get used to the new system before they were required to transfer over to it. A company can have two and sometimes four years before they have to go into the new system. With every one of the rules we, as Brian described, have done as proposed rules asking for massive industry output, the weekly conference calls, and the hundreds of seminars and conferences that we have supported as well in order to educate people. And so, yes, we have been doing it in two ways: one, structurally with significant delays and implementation, allowing people to transition over; and then second, education and outreach.

And then third, just a complete recognition, and we ask companies about this at the beginning where we said if we were going to do this very large transition in the system, it is going to be very hard for several years. You are going to have to completely rethink everything that you got used to over the last 50 years in how export controls work. Is the long-term gain of the reduced regulatory burden and the simplified system worth the short-term pain in getting used to what those new rules are and getting off of old practices? And almost overwhelmingly exporters said yes. So that is why we have done what we have done for the national security objectives that Brian laid out very well in his opening.

Ms. VELAZQUEZ. Thank you.

Mr. Nilsson, in July 2013, the State Department successfully transferred its export licensee database and software platform to the one used by the Department of Defense. The Department of Commerce was scheduled to begin using it in early 2014. As a result, the three largest departments involving export licensing are now on a single IT platform. Can you describe whether the creation of a single IT platform allowed the Departments of State, Commerce, and Defense to more effectively administer the Export Control System?

Chairman CHABOT. And the gentlelady's time has expired, but you can answer the question.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Mr. NILSSON. Yes. I can report that the transition took us longer than we had anticipated. We actually did not fully transition—the Commerce Department, Department of Energy and the other parts of the State Department did not fully transition to EXPORTS database until October 2015. But the beauty of us all being on one system is that previously we were all on separate IT systems, and so I could never see what Kevin had approved and I could never see what Kevin denied, which is also even of more concern, and vice versa. And so now by having everybody on the same IT system, we as a whole government can tell collectively what the U.S. Government has approved and not approved for export.

The beauty also of us now up on a single platform is that now we are able to turn our attention to creating a single portal so that exporters would only have to go to one place to be able to file a license application or any other of these types of authorizations or determinations that they seek from the government. We had done some preliminary work on that in 2010, but then realized we needed to wait until we had everybody on the IT platform first. We have returned to that work now. We are in the early days, but it is ongoing, and the beauty of that will be particularly helpful for the small- and medium-size companies because as you come in through a single portal, it will guide you as you fill out your application for where you need to go. Therefore, they do not have to figure out if they are filing at the wrong agency. We will be able to sort that out electronically for them.

Chairman CHABOT. Thank you very much. The gentlelady's time has expired.

The gentleman from Kansas, Mr. Huelskamp, who is the chairman of the Subcommittee on Economic Growth, Tax, and Capital Access is recognized for 5 minutes.

Mr. HUELSKAMP. Thank you, Mr. Chairman. I appreciate you holding this hearing. Gentlemen, thanks for joining us today and trying to get a very quick up-to-speed understanding of export control reform. I know you have been working on this a long time, 5 or 6 years' initiative of the administration. I appreciate the efforts.

My question though is what is taking so long in Categories I, II, and III? And I see from your website or the government website absolutely no effort is reported on that. So, and that would be the firearms, guns, and ammunition categories. I will note for those listening that you have completed the missiles portion, IV; explosives, V. Satellites, nuclear, chem bios made some progress as well, but for some reason, Categories I, II, and III have been sitting out there for 2 or 3 or 4 years. I do not know who would answer that and explain what the reason is for the delay.

Mr. NILSSON. Sure. I own those categories so I will answer the question. The prioritization of the categories was really based on the remarks from Secretary of Defense Gates when we did the roll-out in April 2010, where he said—I have outlined the three objectives of the reform initiative—but the SecDef's view was that we needed to prioritize based on interoperability with allies. And so the categories that we have been doing are based on those that provide the best benefit for interoperability with our key allies. We have also systematically been working through those. We have not come to Categories I, II, and III yet. We have done some preliminary work on them, but we are committed to finalizing the initial review of all the categories this year.

Mr. HUELSKAMP. Is there an interagency group recommended to move forward on that?

Mr. NILSSON. Yes. It is the same seven departments that have been working on all of the categories, and so we have done work on all 21 categories from the start. We are just not quite there for publishing proposed rules.

Mr. HUELSKAMP. Exactly why are those categories not making progress, and when will we make progress?

Mr. NILSSON. Well, we are committed to publishing, finishing the initial review, and having those categories done this year. The primary reason—

Mr. HUELSKAMP. This year—

Mr. NILSSON. Yes, in 2016.

Mr. HUELSKAMP. Well, this administration is going to run out of time.

Mr. NILSSON. Yes.

Mr. HUELSKAMP. Again, there is absolutely no progress. You have got proposed rules in 2011, 5 years ago, for like Category VIII, and it is glaring. I just do not understand why those three have absolutely no progress. In terms of this sheet, even though there have been recommendations from the interagency group that you move forward. When was that recommendation made?

Mr. NILSSON. We were working on rules in 2012 on all 21 categories. Again, it has been a prioritization for those categories meeting the Secretary of Defense's priority for those that contribute to interoperability. In the final category—

Mr. HUELSKAMP. And he has not been the Secretary of Defense for a while now.

Mr. NILSSON. Yes.

Mr. HUELSKAMP. But my question is, I still do not understand why these three categories do not have any progress on them.

Mr. NILSSON. Primarily because we are prioritizing those that are key for interoperability with allies. In our firearms category, that category warrants reform just as all the other categories. But over 90 percent of what I control in that category are not being exported to governments or militaries, so there is not an interoperability issue with regard to those. But that begs the question that they certainly warrant going through reform just as all other sectors warrant going through reforms. And so some industries have not benefited yet from reform, that is firearms, that is large manufacturers of things like howitzers. It is people that do toxological agents, do chemicals. We will finish the job.

Mr. HUELSKAMP. Those are all in Categories I, II, and III?

Mr. NILSSON. Those are all in the categories that have not yet been deployed and finalized.

Mr. HUELSKAMP. Okay. Well, some of those are not I, II, and III, obviously.

Mr. NILSSON. That is right.

Mr. HUELSKAMP. But you have made a proposed rule on a number of those already. My question is Categories I, II, and III. When can I expect—

Mr. NILSSON. This year.

Mr. HUELSKAMP. This year?

Mr. NILSSON. This year.

Mr. HUELSKAMP. This administration?

Mr. NILSSON. We will finish. We are going to finish the USML this year.

Mr. HUELSKAMP. Have the rules not been almost approved all the way up the chain and proposed those?

Mr. NILSSON. They have not been finalized yet. So, again—

Mr. HUELSKAMP. Who has not signed off on them? I am just trying to get—

Mr. NILSSON. The seven departments have not signed off on them for what the rules would propose. But we are committed to doing proposed rules on those categories as all other categories.

Mr. HUELSKAMP. Well, there are firms that are waiting on this and have been waiting years trying to fix—

And you were given, I think, \$10 million additional to finish some of these things in the current fiscal year. So are we going to get done in the current fiscal year, or are you talking about next fiscal year before we even get done? When you say “current year,”—

Mr. NILSSON. Well, we need to go through—the way the process works is we do proposed rules. We digest the public comments on those to see what adjustments we need to make, and then at that point, then we would draft final rules, and then we would publish final rules.

Mr. HUELSKAMP. Sure.

Mr. NILSSON. Then there is a delayed effective date to allow each affected industry to be able to have time to transition to the new rules. That is the process for every category. So that process will run for Categories I, II, and III, just as we are in the midst of Categories XII, XIV, and XVIII.

Chairman CHABOT. The gentleman's time has expired.

Mr. HUELSKAMP. Thank you, Mr. Chairman.

Chairman CHABOT. Thank you.

Mr. HUELSKAMP. I had a prop if that would help last longer.

Chairman CHABOT. We like props.

Mr. HUELSKAMP. Thank you, Mr. Chairman.

Chairman CHABOT. The chair would just note that there is considerable, I think, suspicion by many members, at least probably half the members on this Committee, that this administration, because it is not particularly considered to be a friend of guns or ammo, that this is sort of a willful neglect on their part at least, and the irony is that because of this attitude towards concern about the administration's attitude towards guns, there has been a boon in sales of guns and ammos during the administration. So I think that is probably the underlying sentiment of my colleague's questioning there.

I would now like to recognize the gentleman from New Jersey, Mr. Payne, for 5 minutes.

Mr. PAYNE. Thank you, Mr. Chairman.

Let us see. I am just trying to gather myself after that. Thank you, Mr. Chairman.

Mr. Wolf, in the 2014 budget, the Bureau of Industry and Security processed 30,953 export license applications. BIS approved 83 percent of the applications, returned 16 percent without action, and denied 1 percent of them. Can you tell us, can you take us inside the BIS review process and explain how you make a determination on each application and what industry and sector had the highest denial rate?

Mr. WOLF. Sure. The way—for items that are subject to the Commerce regulations, and our volume has not quite doubled, but moved from about 23,000 to about a little over 36,000 since the beginning of the reform effort for items that are on longer subject to their regulations. A company will submit—well, first, it will go

through the analysis of determining whether their item is subject to our regulations and determining whether a license is required for that destination. So that is the first step, because under our regulations the answer is that it depends upon what country you are shipping to about whether a license is required. Then, if a license is required to that destination, the regulations say to the exporter, you can go through and see if one of our exceptions apply. If it is an export to a friendly country for a certain item, then you will not need a license if you follow these conditions. And so, for example, under license exception Strategic Trade Authorization, which is one of the hallmarks of the reform effort, there have been over 23,000 shipments of items where exporters have determined a license is not required where prior to the reform effort a license was required.

So let us say they get to the point where an exception is not available but a license is required, they, through an electronic system, send in information about end use, end-user destination, value, country, what the end use is going to be, and a description. We, Commerce, will go through that and determine if all the information is there and sufficient, and then we forward it out to the Department of State, the Department of Defense, and Department of Energy for them then to further defer out to other parts of their agencies for review as to whether is a national security or foreign policy issue with the approval, denial, or conditioning of that license. Within a set period, roughly 30 days, under an executive order, they will get their answers back in to us. In most cases, all of the agencies agree and we will send back an approval or a denial or an approval with conditions limiting what they had asked for initially. In those very rare cases where there is a disagreement, we have an escalation process up to the Assistant Secretary and beyond, a process within the government to resolve disputes among the agencies. Once the disputes are resolved, then electronically a document goes back saying you have permission to export to these end users for these end uses. That is the essence of how the process works.

Mr. PAYNE. Okay. And what was the denials? What is the largest sector of denials?

Mr. WOLF. So given that the largest volume of what we are dealing with now is in the aircraft and engines category in absolute numbers, those tend to be among the higher either denial or RWA rates just based on absolute numbers. In terms of percentage denials, it would be in areas of night vision and optics where there are significant limitations or conditions about how those commercial items would be used overseas that could be potentially used for a bad end use. So the answer depends if it is an absolute or a percentage-based number.

Mr. PAYNE. Okay. Well, I appreciate your testimony today. It is very refreshing to have an entity come before us and are really working to reduce the bureaucracy and meld together and, you know, I wish you continued success in that effort.

Mr. WOLF. Thank you.

Chairman CHABOT. Does the gentleman yield back? Okay, thank you. The gentleman yields back.

The gentlelady from New York, Ms. Meng, who is the ranking member of the Agricultural, Energy, and Trade Subcommittee who held the hearing yesterday, is recognized for 5 minutes.

Ms. MENG. Thank you, Mr. Chairman and to our Ranking Member Velázquez, and to our witnesses for being here and for the great presentations.

I know that, Mr. Wolf, you spoke a little bit about education and outreach initiatives through BIS, and I would love to hear some more. Mr. Nilsson, I am wondering how you provide such assistance, specifically regarding the U.S. Munitions List. How do you work with the SBA Export Assistance offices? And do you have staff in these offices who can assist a potential small business exporter who has a USML classified technology product and has never exported before, and just how this process works?

Mr. NILSSON. Yeah. The State Department, we actually do not have staff who are in the SBA export centers. We do, in partnership with the Commerce Department though, coordinate our regulations so that they are actually shared with the SBA and shared with the Export Assistance Centers, so they see the rules rather than having to just rely on seeing them in the Federal Register or relying on our websites. But we do have them on our websites. We do outreach and training. We actually work closely with a number of organizations around the country, particularly with the Society for International Affairs, which is a nonprofit organization which hosts tailored export control sessions around the country on the U.S. Munitions List.

We also, you know, I think we mentioned earlier, we have a number of decision tools and guidelines so that you can walk through a decision tree for how to engage our controls that we have on our website. We also have a dedicated team that does nothing but talk to people on the phone and answer questions. Last year we did a little over 19,000 phone call counseling sessions with companies. We also answered a little over 22,000 emails of people coming in and asking questions. We also coordinate with the other six departments, and we have a single website that is an administration-wide website where everything that we do is in one spot, so it is sort of a one-stop shop that is intended to guide and help provide assistance to companies. Then we participate with our sister agencies, with regional organizations, to do outreach and training. We did a little over 700 last year.

Mr. WOLF. So a few other points. Prior to the reform effort, there were about a dozen different parts of the U.S. Government that maintained lists of individuals and companies against which there were sanctions or prohibitions or limitations on dealing with. These came from different parts of Commerce, from State, from the Treasury Department and elsewhere, and one of the early things that we did in the reform effort at the Commerce Department is that we took on the responsibility for consolidating all these various lists that are pumped out on a daily basis by the U.S. Government of entities and persons against which there are some sort of sanctions or limitations, and we have consolidated that all into one list administered by Commerce that we make free and available in a downloadable format for exporters. That has been a significant improvement for exporters.

As I mentioned, the 300 or so conferences that we did last year, an entire office that handled about 33,000 phone calls from exporters answering generally very basic questions about how the system works. We are redrafting parts of the regulations and the definitions, as Brian mentioned, so that you do not have to do a sort of guesswork as to whether something is or is not controlled. I was a practitioner in this area for a long time before joining the government, and it was as much lore as it was law. People could not actually believe the regulations in front of them because it was done by reputation or lore, or black magic, as opposed to actual bright line definitions. In addition to defining the terms, we are defining them in such a way as that someone can go onto one of these decision tree tools that Brian and I are creating on our websites, go through and answer a series of questions, “yes” or “no” objective questions, and always get to the right answer as a matter of law, and thus, not need expensive outside counsel to be able to go through and make those determinations. As I said, education and outreach is absolutely vital to what we do, not just for the sake of the small companies, but for the mission itself, because if they cannot understand and comply, then the national security and foreign policy objectives are not met.

Any other ideas or suggestions or attention that this Committee could help us bring to that effort or suggestions, you know, we are all ears, and we are thrilled that you are engaged in participating and helping us on this.

Ms. MENG. Thank you so much. I know I am just about out of time, but I just wanted to ask my last question. Lastly, just a note on the commercial relationship with our closest ally, Israel. In December 2014, President Obama signed into law the U.S.-Israel Strategic Partnership Act of 2014, which provides in part that the administration shall take steps so that Israel may be included on the Strategic Trade Authorization One list. If I could request that you advise me in writing what steps have been taken as required by the law and what more needs to be done in order to fulfill this requirement. Thank you, and I yield back.

Chairman CHABOT. The gentlelady yields back, and we would ask that the panel comply with the gentlelady’s request. Thank you.

We will move into a second round now, and I will recognize myself for 5 minutes.

We heard from one of our small business witnesses at the Subcommittee meeting yesterday that delays at the Directorate Defense Trade Controls sometimes lasted over 90 days and that classifications were occasionally kicked back between the DDTC and BIS, resulting in further licensing delays up to 3 weeks. What is the explanation for this delay, and what effort is being made to address these concerns, Mr. Nilsson?

Mr. NILSSON. Sure. That is a good question, so thank you.

We have a process called the Commodity Jurisdiction Determination Process, and that is where exporters can come in to us and ask whether or not I have jurisdiction for the item or Kevin has jurisdiction for the item. That is a process that has been in place a long time. When President Clinton did a reform initiative, he issued new directives as to how to improve the process. Because of the

vagueness and the lack of specificity in the Munitions List, it became increasingly difficult for companies to know whether or not their items were subject to our list. Then President Bush, in his reform initiative, also issued new guidelines for how to run that process at the end of his administration.

So where we are now is we actually anticipated that we would have a surge of such requests as a result of the changes that we are making just based on companies wanting the comfort of having something from the government to tell them whether or not their item is subject to my list. We actually had the most number of commodity jurisdiction determination requests we have ever had in 2012. We did 1,367 CJ requests that we processed. Surprisingly, with the numbers that are coming in, we expected spikes by category as we have deployed new categories so that people would have questions, like when aircraft first went live, we anticipated getting a lot of commodity jurisdiction requests, and we have not had that. We have actually had a relatively steady decline in the number of CJ requests as a result of ECR. So last year we were down to slightly over 1,000, but we have seen about a 13 percent decline, and we attribute that because we have taken out that language that I mentioned earlier where it says an item is specifically designed, adapted, modified, or configured for anything above, and now it is an enumerated list. My list is working as intended as we are transitioning.

We will always process CJs if someone asks for one, if they want that clarity and they want that piece of paper to say that, yes, it falls under Category VIII(h) of the ITAR or not. In that regard, we think the system is working as intended and we are not having the spike that we thought we would have.

With regard to license applications, companies have had a history of coming in to the State Department and asking for authorization where they may not specify in great detail what is on that license application because, again, because of the vagueness of my own list pre-ECR. Now they do have the challenge of knowing more specifically about what they are requesting on an export license application. In some cases, we will return that application without action if it is not my jurisdiction. And in each category, similar to what I mentioned on CJs, in each category that they have gone live, we have had a spike in return without actions with people coming in just for clarification because, again, they wanted a piece of paper from us coming back to say it is no longer our jurisdiction; go see the Commerce Department. So it provides them the comfort level and it provides them the piece of paper so that if a Customs agent stops them at the border, they have a piece of paper from me to be able to answer that question.

Chairman CHABOT. Thank you. Let me cut you off there because I have a little over a minute left and I want to get to one more question.

This one is for you, Mr. Wolf. Among a broad spectrum of businesses, particularly amongst small businesses, the staff that they can devote trade compliance issues and programs oftentimes it is just not what they would probably like to do because they have so many other things that they are getting hit with. Does the administration take this kind of reality of a situation out there in the

small business world into consideration when you are working with these programs?

Mr. WOLF. Oh, absolutely, for the two reasons or ways in which I described earlier in terms of the structure of what we are doing and the reduction of the burden of items that move and our philosophy and mindset and the resources that we devote to education and outreach. Personally, I do every day because that is where I came from. I was a counselor to large and small companies for 17 years before joining the government, and know very, very well the difficulties they have and had in complying with these regulations. Every day I bring that experience in to trying to make the system more understandable for them. We have not actually completed by any means, but we have moved a dramatic way in that regard.

Think about this little company that makes the pivot blocks. Think about all those documents that I described that used to be required and all those regulatory requirements that used to exist in order to trade in these items prior to the system. Those largely no longer exist for the vast majority of trade. The number of times I talk with a small- and medium-size company where they go from having to have their compliance staff to administer 100 Manufacture License Agreements and Technical Assistance Agreements, these large complex agreements, under their system down to a very small number of pieces of paper under our system is dramatic. I hear it everywhere I go.

We can always find situations of individual companies where something is not working or is not clear or they have a 3-month delay on a classification request or a license, but in the aggregate, the data are such that the overall regulatory burden structurally is dramatically reducing.

Chairman CHABOT. Thank you very much. My time is expired.

The gentlelady is recognized for 5 minutes.

Ms. VELAZQUEZ. Thank you.

Mr. Nilsson, ITAR license application must be reviewed within a 60-day timeframe. On average, how long does it take for this application to be reviewed?

Mr. NILSSON. Sure. That requirement comes as part of President Bush's Export Control Initiative where he issued a directive in SPD 56 in 2008 that required me to process a license within 60 days. Our processing times have actually gone up as a result of ECR. I would say the last full year before we started making changes to the list we did close to 90,000 licenses, and our average processing time was 19 days. Last year we did about 44,600 licenses, so it was almost half of what we were doing previously because I have given all the easy cases to Kevin, and our processing times have gone up to 27 days. The reason being is because the pivot block cases were easy, and so these are easy cases to process, and so it actually helped me keep my average processing times quite low. When I gave Kevin all the easy cases, that leaves me with the hard cases. Anyway, yeah, I am not taking jurisdiction back.

As a result, that actually is sort of the whole point, was that the items that are left on my list are the most sensitive items, and so we want our licensing offices within State and the Department of Defense to have the time to really look at these cases that warrant

the level of control. It is the higher wall around a smaller yard that Secretary Gates often spoke of.

Ms. VELAZQUEZ. Thank you.

Mr. Wolf, there is evidence to suggest that many foreign companies actually avoid U.S. companies when searching for products due to the increasingly strict export regulations. Foreign customers will often buy a more expensive, non-U.S. source part just to avoid our Export Control System. This is particularly true when the international traffic in arms regulations apply. Mr. Wolf, at a time when we are trying to increase American manufacturing, are there other reforms or actions that can be taken to ease the burden on competition?

Mr. WOLF. Well, what you described in your question is the essence of what I have been living for the last six years, the ITAR-free movement. The Defense Department did a terrific job several years ago describing the harm to the U.S. satellite industrial base that resulted from ITAR controls, as required by statute, by the way, for all commercial satellite spacecraft and related items. That created the very situation you have described of a disincentive for non-U.S. companies to avoid U.S. origin content for the very reason that you described. Fortunately, working with Congress on a bipartisan basis, we were able to get those controls removed and allowed for a more tailored control for our satellite and space industrial items.

To answer your question about what next, because what you described, again, is the essence of why we are doing what we are doing for the less sensitive items to the countries that are not subject to embargos is to continue on, finishing up, revising the remaining categories, fixing them over the years as technologies change, threats change, to correct mistakes that we have made, and eventually get into the export nirvana of a single agency under a single list, which is something we will not be able to complete now, but all of the work that we have done these last 6 years are all the groundwork to get to that point. This is a multiyear effort to accomplish the very point that you were describing, again, never forgetting that these controls exist for a reason, the national security and foreign policy reasons of there are some items to some end users for some end uses we do not want. In getting to that point, you described the difficulty that was described on the panel because under the old system it was very easy for the practitioner, for the freight forwarder to know when a license was or was not required. The downside is it has the negative effect that you described very well. The system thus in tailoring it creates more complexity, but eventually it will achieve the objectives that you just described.

Ms. VELÁZQUEZ. Thank you.

I yield back.

Chairman CHABOT. Thank you. The gentlelady yields back.

The gentleman from Florida, Mr. Curbelo, who is the chairman of the Subcommittee on Agriculture, Energy, and Trade that held the Subcommittee hearing yesterday on this issue is recognized for 5 minutes.

Mr. CURBELO. Thank you, Mr. Chairman. Thank you for your leadership on this issue. Thank you for your hearing, and I thank the ranking member as well.

Yesterday, we learned a lot from witnesses who have experience in dealing with all of these complex issues, including a small business owner from my district in South Florida. I wanted to ask, through your agency's collaboration with the SBA, do you consider the Office of International Trade Staff to be trained well enough to address many of the questions small businesses have regarding the complex export control regulations? I want to focus in on this because it was a recurring theme yesterday where a lot of these people just could not find answers.

Mr. WOLF. We would not expect the SBA to be an export control authority or expert in this, and in my testimony it describes a great deal of outreach and interaction we have had with the SBA. Your question reminds me that we need to keep doing that over the course of 2016 to get to the point that anybody at SBA or any other small business organization knows enough at least to be able to refer it to State or Commerce for us to then take it from there. It really would not be practical to try to deputize effectively other agencies to come up to speed and become experts on this. I think the best that we can hope is that they are sensitized to the issues and the options and the resources that are available within the Departments of Commerce and State.

Mr. CURBELO. I think what at least I would request is that there be a special emphasis on small businesses. Again, the large corporations, they can figure this out. They can hire teams. They can hire consultants. It is the small businesses that really get left waiting for answers and sometimes never figure this out. I think I would probably speak for most members here on the Committee and say if there could be a greater emphasis, focus, dedication of resources to helping referrals from the SBA, for example, that I think could make a big difference.

Mr. WOLF. I agree. Any other ideas or suggestions or help in terms of visibility or people to talk to or companies to make sure are in the loop, I look forward to working with you on that. I completely agree with everything you said.

Mr. NILSSON. I will add that we have been partnering with SBA to make sure that they see the rules and the proposals and the finals as they come through, but one of the things that we can take back is that Kevin and I both have dedicated staff that do nothing but outreach and counseling and answering the phones, and so we can make sure that the folks in SBA know who to call on what. We can certainly take that back and make sure that that is happening.

Mr. CURBELO. Thank you.

Thank you, Mr. Chairman.

Chairman CHABOT. Thank you very much. The gentleman yields back.

And we want to thank our witnesses for their testimony here today. I think you have shed some light on an area that can be quite complicated, but nonetheless is extremely important and particularly to the small business community, and that is obviously our principal responsibility is to make sure that we are looking out

for the small businesses all across America who actually hire 70 percent of the new folks that come into this economy. So we appreciate your testimony.

I would ask unanimous consent that members have 5 legislative days to submit statements and supporting materials for the record, and if there is no further business to come before the Committee, we are adjourned. Thank you very much.

[Whereupon, at 11:13 a.m., the Committee was adjourned.]

A P P E N D I X**Opening Remarks of****Kevin J. Wolf****Assistant Secretary of Commerce for Export Administration****House Committee on Small Business****Hearing****“Export Control Reform: Challenges for Small Business?”****February 11, 2016**

Thank you, Chairman Chabot and Ranking Member Velázquez.

The purpose of export controls is to create an enforceable regulatory net over the export, reexport, and transfer by foreign and domestic persons of specific types of commodities, software, technology, and services to specific destinations, end uses, or end users for various national security, foreign policy, and other reasons. Unless those affected by the regulations understand them, they cannot comply with them, and the national security and foreign policy objectives of the controls will not be met. This is why outreach and education, particularly of small- and medium-sized companies, is a vital part of our mission. Hearings such as this and your continued interest in the topic help us considerably. So, thank you again.

As with most areas of regulation, export controls are inherently complex. Some items and activities warrant strict controls, many warrant few controls, and others warrant a mix depending on the circumstances of a particular transaction. Not all destinations, end uses, and end users are of equal concern. Foreign policy concerns and priorities change over time. Technologies evolve. Newly developed technologies can be extremely sensitive; others morph from predominant military use to something that is in normal commercial use. Controls are needed on end uses and end users of concern even if the items involved are widely available or unsophisticated. Subtle differences in fact patterns or technical characteristics of a product can have significantly different outcomes in the scope of control. Most controls reflect compromises in wording and scope reached by dozens of like-minded countries in multilateral export control arrangements. All reflect consensus views of the law enforcement, national security, foreign policy, and economic security equities of multiple U.S. government agencies. Finally, the controls are an aggregation of decades of individual statutory and regulatory decisions spread out over multiple government agencies written and edited by hundreds of different individuals that have accreted into the complex system we have today.

In the abstract, there are, in the extreme, two ways to make the system vastly more simple—require a license everywhere, all the time, always for all items or all listed items *or* don't require a license at all unless specifically informed by the government. The former, of course, would impose a massive and devastating regulatory burden on exports and require the creation of a U.S. Government export control infrastructure far larger than what we have today. The latter would not satisfy the national security and foreign policy objectives of the controls. There is thus an inherent tension in export controls between simple, broad regulations that control too much and impose an excessive licensing burden, on the one hand, and tailored, detailed controls that control just the right amount but are initially more complex to work through, on the other. This is the daily challenge for export control policy makers—deciding where the lines should be drawn. This Administration has focused on trying to tailor the controls to reduce the overall regulatory burden as much as possible without compromising the national security and foreign policy objectives of the controls. This means that education and outreach are vital to the success of the effort.

Although there are many U.S. government agencies that control the export of items in one form or another, the two agencies with the largest portion of the responsibility are represented here before you today—the Commerce Department's Bureau of Industry and Security (BIS), which administers the Export Administration Regulations (EAR), and the State Department's Directorate of Defense Trade Controls (DDTC), which administers the International Traffic in Arms Regulations (ITAR). I can assure you that both BIS and DDTC management and staff are committed to administering their controls in the least burdensome way possible without impairing the national security and foreign policy objectives of the controls.

These are not just words. The Obama Administration launched in 2010 the most fundamental reform of the system since World War II. The reform focuses our controls on those items that must be rigorously protected while ensuring that our controls do not drive foreign customers to foreign suppliers and U.S. companies offshore. Two significant parts of this plan are nearly complete—(1) the transfer of less sensitive military and commercial satellite items from the ITAR to the EAR to allow for more flexible controls over trade with allied countries and (2) the update and harmonization of key EAR and ITAR terms and principles to reduce inherent regulatory burdens. Once companies learn and adapt to the new structures—and we recognize that the transition process can be difficult—the regulatory compliance obligations, particularly for small- and medium-sized companies, will generally be materially reduced.

First, the revisions identify more clearly what is actually controlled. For too long, determinations about what was and was not controlled, and which list governed an item, were, as a practical matter, more a function of lore rather than law. Over the last six years, we have engaged in a massive industry outreach effort to ask for help in re-writing most of the controls in ways that industry can better understand. Every change was proposed for com-

ment—some more than once—to ensure that we got it as clear as possible.

Second, the rebuilding of the control lists moved—but did not de-control—hundreds of thousands of items, mostly parts and components predominantly manufactured by small businesses, and related technologies from State’s regulations to the more flexible Commerce regulations. The transfer to Commerce’s regulations of these less sensitive military and commercial satellite and space items eliminates many regulatory burdens. For example, for the items that have moved to the Commerce list from the State list:

- There are no registration requirements. This eliminates the expense of paying to register and the burden and expense of preparing and submitting these forms or fees. For those companies with a limited product line where all their items have transferred, this allows for a significant reduction in burden and cost.
- There are no fees for submitting license applications. For small companies exporting products with low margins, this is a significant advantage.
- There are no requirements to get permission merely to manufacture or to market abroad. The Commerce regulations, of course, still control the flow of goods, technology, and software, but with far shorter and simpler forms than State’s Manufacturing License Agreements and Technical Assistance Agreements. Most Commerce authorizations also have significantly fewer conditions and regulatory burden requirements than do State’s agreements.
- There are no *per se* requirements to have a purchase order for each application. This means that an exporter can resolve its licensing obligations before knowing whether it has a sale, which saves time. It also dramatically reduces the total number of applications and licenses needed over the duration of a regular relationship with a foreign customer that will involve multiple purchase orders.
- Except in situations involving military and satellite items destined to countries subject to embargoes, the Commerce rules generally do not have a “see through” rule. This is the rule that means that an item is always subject to U.S. jurisdiction even when incorporated into foreign-made items or uncontrolled items. For trade with non-embargoed countries, the Commerce regulations have a *de minimis* rule, which means that if the value of controlled US-origin content is less than 25%, then the foreign-made item is generally not subject to U.S. jurisdiction. This change largely eliminates the incentive for foreign companies in non-embargoed destinations to design-out U.S. origin items, particularly parts and components. It thus bolsters the health and competitiveness of the U.S. industrial base because those in non-embargoed countries will generally no longer need to second source parts and components elsewhere.
- Most importantly, the Commerce regulations have multiple license exceptions that do not exist in the State regula-

tions, and which State is prohibited by law from creating. In most cases, these exceptions allow exporters to ship their products to allied and other non-embargoed countries without the need to apply to the government for a license, assuming the parties are willing to abide by various recordkeeping and other conditions to help ensure compliance with the exceptions. One of the exceptions developed as part of the reform effort, License Exception Strategic Trade Authorization (STA), allows for significant reductions in regulatory burdens associated with trade with NATO and other close allies. It enhances our national security by making our systems more interoperable.

For all these reasons and others, the Export Control Reform effort helps small businesses, particularly defense exporters, by increasing the security of supply from small companies that are the second and third tier suppliers in the defense industry, facilitating timely and reliable supplier relationships between U.S. exporters and their foreign customer base, and enhancing their long-term health and competitiveness. These sectors include aerospace, military vehicles, marine vessels, space, satellites, and electronics.

There are many other actions Commerce has taken to make compliance for small and medium-sized companies easier. For many years, the Departments of Commerce, State, and Treasury have maintained eleven separate lists of entities that are sanctioned for various national security and foreign policy reasons, including for illegally exporting arms or other items, violating US sanctions, engaging in terrorism, and trafficking narcotics. If a company or individual appears on the list, U.S. firms must do further research into the individual or company in accordance with the administering agency's rules before doing business with them. To ease this review process, an interagency task force created the Consolidated Screening List (CSL) in 2009 so that all eleven lists can be accessed in one place. Further, in July 2015, the Department of Commerce created a new web search tool to help US companies easily search the CSL. This CSL web search tool has "Fuzzy Name Search" capabilities enabling companies to search the CSL without knowing the exact spelling of an entity's name. This is particularly helpful when searching for names on the CSL that have been transliterated into English from non-Latin alphabet languages. All of these actions taken together have greatly benefitted U.S. companies by reducing the time needed to search all eleven lists and by providing a free alternative to costly third-party software vendors.

We also revised a number of license exceptions, such as those for temporary exports, exports of replacement parts, and exports to governments in order to broaden their scope and to make them less burdensome. They still need work but they are better. We've increased the license validity periods and greatly expanded, as a matter of practice, the flexibility of our licenses so that they can be tailored to specific transactions. We revised and significantly reduced the support document requirements—requirements that were among the most complicated sections of the EAR. We have simplified the license conditions on approved licenses.

As evidence of how important education and outreach are to our bureau, I would like to give you some representative examples. In Fiscal Year 2015, we estimate that our outreach programs resulted in over 100,000 interactions with U.S. and foreign persons. We conducted over 350 events for industry, including the weekly teleconferences that I host on specific Export Control Reform topics, the seminars that are held throughout the country and overseas, the industry group meetings at which we speak, our Technical Advisory Committee meetings, the small- and medium-sized business conferences that we attend, and the webinars we produce. We conducted outreach events in 18 states and ten foreign countries. We've conducted or participated in 51 seminars in the United States.

Our seminars and online services are an effective way for small- and medium-sized exporters to understand their responsibilities as members of the regulated community. We have published several blog posts on the Commerce Department website on how export control reform benefits small businesses and entrepreneurs, and we worked with the Small Business Administration (SBA) to share this information through their social media networks. We have added over 6,700 new users to SNAP-R, our electronic license application system, bringing the total number of users to over 36,400. The on-line interactive decision tools we have developed received over 33,000 hits. The BIS website has additional tools and resources in our Exporter Portal. In addition, our Office of Exporter Services counseling line provides exporters with free counseling via telephone. Our export counseling staff has answered over 33,000 telephone and e-mail inquiries.

We have partnered with SBA on a number of efforts. For example, BIS Under Secretary Eric Hirschhorn conducted a training session for SBA international trade staff from 68 district offices and 20 export assistance centers across the country. The training was designed to help SBA staff identify companies who may be covered by export control regulations and direct them to BIS resources. Through such sessions, BIS utilizes SBA's network to help inform small- and medium-sized businesses.

BIS has also collaborated with SBA and other organizations representing the interests of small and medium-sized enterprises at a number of conferences. At our annual Update conference, we partnered with SBA, the National Small Business Association, the Maryland Small Business Development Center (MDSBDC), and the Minority Business Development Agency. In 2015, BIS sent outreach, regulatory policy, and compliance staff to the Association of Small Business Development Centers' (ASBDC) annual conference in San Francisco and counseled approximately 150 SBDC advisors. BIS representatives spoke at four programs sponsored by ASBDC in collaboration with the Bureau of the Census to educate exporters and freight forwarders on properly reporting required information in the Automated Export System. As a result of this partnership, ASBDC has increased the number of export control-related workshops and exhibitors at its annual conference, and begun to offer a certificate in international trade and related-regulations to its membership.

BIS has held open fora on SME comparative trade issues and participated in state-level trade conferences to facilitate trade. In 2015, the President's Export Council Subcommittee on Export Administration, one of BIS's industry advisory committees, prioritized its work with the National Institute of Standards and Technology's ExportTech program, a national export assistance program that targets small- and medium-sized businesses. BIS representatives participated in a webinar sponsored by FedEx that was intended to reach FedEx's small- and medium-sized exporting customers.

For this year, we plan to sponsor or co-sponsor 23 seminars, including the annual Update conference and the West Coast Export Control Forum, in thirteen different states. We will develop and conduct many new webinars and will post additional new educational videos on our website. BIS staff, including the Under Secretary and I, will continue attending as many compliance conferences and company training events as possible. I will also continue to answer, every Wednesday at 2:30 over an open, *free* conference call, every question that comes into BIS. These calls have been highly popular, particularly with small- and medium-sized companies, which generally do not have large legal teams or compliance staffs.

In addition to the short- and near-term rationalization benefits for small- and medium-sized companies, this work has established the framework for what could be an even more significant rationalization and simplification of the system, which is the creation of a common set of export control regulations and then, eventually, with the help of Congress, a single export licensing agency that would administer a single set of regulations with a single list of controlled items. In addition, now that the internal work on a common IT system for interagency review of Commerce license applications is almost complete, we're renewing the effort we started a few years ago to complete a common Internet-based license application portal for both Commerce and State and a single license application form common to both the EAR and the ITAR. We will need a lot of industry input and advice as we move to this next step to make sure it is modern and effective.

Additionally, under ECR, the President established the Federal Export Enforcement Coordination Center, to which the Commerce Department contributes several personnel. Among its mandates, the Center will coordinate law enforcement public outreach activities related to U.S. export controls. In the current U.S. export controls system, there are several federal regulatory (including Commerce's BIS and State's DDTC) and enforcement agencies (BIS' Office of Export Enforcement and U.S. Immigration and Customs Enforcement's Homeland Security Investigations), involved in outreach to industry often targeting the same exporters or industry sectors, leading to confusion regarding proper reporting or disclosure to government agencies. Coordination of these efforts will result in a more seamless, efficient, and holistic U.S. government approach to private sector outreach to include small businesses.

In conclusion, the ECR goal of creating a new export control system defined by what we called the "Four Singularities"—a single

control list, a single licensing agency (SLA), a single IT, and a primary export enforcement coordination agency was structured with the issues of small- and medium-sized companies in mind. We recognized that small firms account for more than 99 percent of all employers, 98 percent of all exporters, and a third of the annual value of U.S. exports. They are the engine of technological innovation and it is thus in our national and economic security interests to ensure that these small businesses can successfully navigate the nation's export control system. We understand that getting used to the new system can be a burden. This is why we have stretched the implementation of the changes out over a number of years, with significant delayed effective dates and multiple opportunities for industry to comment on the proposed rules years before they became effective. I am completely confident, however, that once the essence of the reform effort is in place and companies have adapted to it, it will properly implement the national security and foreign policy objectives of the controls in the least burdensome way possible. I look forward to your ideas, suggestions, and help for this part of our mission. Thank you.

Testimony of Deputy Assistant Secretary of State for Defense
Trade Controls Brian Nilsson at the House Small Business
Committee Hearing on Export Control Reform
February 11, 2016

Good morning Chairman Chabot, Ranking Member Velazquez and members of the committee. I welcome the opportunity to speak with you today about the Administration's Export Control Reform (ECR) initiative. Export controls are a key tool in our national security and foreign policy toolkit yet they historically have not received the attention that they deserve largely because of their detailed, technical nature. The Administration's early and regular engagement with the Congress, and in particular this committee, since the beginning of the reform initiative helped us administer a transparent reform effort in which many companies, large and small, actively participated. This committee in particular helped us develop the partnership with the Small Business Administration that Assistant Secretary Wolf mentioned, so again let me thank you for your continued interest and support.

The U.S. Export Control System is distinct from many of our allies' in that we have had two licensing agencies, one for munitions items administered by the Department of State and the other for dual-use items administered by the Department of Commerce. This structure made sense when governments relied heavily on technology that was uniquely developed for military use. Generally, it took a significant amount of time for defense technologies to migrate into commercial use. By design and by the nature of their development, the commercial and defense technology realms did not intersect as much as they do today.

During this time the United States also was largely self-sufficient: we almost exclusively owned the technologies we needed to meet many of our defense needs and we procured enough for our own military to sustain a robust defense industrial base, both the prime contractors and the many small- and medium-sized businesses that supported them. The threats we faced were also more easily defined, with a largely bi-polar world. These realities were reflected in our export control laws and our implementing regulations, and they served us well.

But these realities have changed. The Berlin Wall came down; the Warsaw Pact was dissolved, closely followed by the end of the Soviet Union. Within a few years, the Pentagon started to procure more off-the-shelf commercial items. The threats we face today are more diffuse and often come not from nation states but from non-state actors. Our export control system did not evolve sufficiently to meet these new threats.

At the beginning of the Administration's reform initiative in 2009, the Intelligence Community was tasked with assessing the current and anticipated threats facing the United States, to help

inform our deliberations on what we should control and how. That assessment concluded that by 2025, virtually all next generation technologies would come from the commercial sector and then find their way into defense applications. That means an almost 100 percent reversal of the development trends that justified having two different export control systems.

As a result of these new realities, our separate systems increasingly collided, with similar items on both export control lists based on subjective design-intent criteria. This resulted in increased ambiguity, complexity, and costs to all involved. Large companies could afford Washington lawyers to help them navigate the system; most small- and medium-sized firms could not. The clash was exacerbated by other fundamental changes: the United States no longer exclusively owns most technologies; many of our defense needs, both in developing systems and in fielding them, are done jointly with our allies; and we no longer procure enough ourselves to sufficiently sustain our industrial base to ensure our companies remain viable at all tiers of supply to meet new or future national security needs.

The cornerstone of the Administration's effort to address these changes has been to re-write the Department of State's United States Munitions List (USML), as the scope of the USML has the greatest impact on the regulated community and what we control drives all other aspects of the export control system. Prior to reform, the USML was a relatively short list of 21 categories of controlled items—like aircraft, helicopters, drones, and lighter-than-air aircraft—not based on specific technical parameters but on whether they were specifically designed, modified, or equipped for military purposes. This design-intent was also applied to all the parts, components, accessories, attachments, and associated equipment for these aircraft without enumeration. That meant we controlled military aircraft, as well as very nut, bolt, screw, windshield wiper, and seat belt buckle on that aircraft.

The aircraft category has typically constituted the largest number of export license applications we process every year, with over 22,000 export licenses in 2012, that last full year before our reforms began to take effect. Of these regulations, about 76 percent were for these unidentified parts, components, accessories, attachments, and associated equipment, typically manufactured or supplied by small- and medium-sized businesses.

We have been engaged in a multi-year, labor-intensive technical review led by the Department of Defense to open each category of the USML and to enumerate those items that provide the United States with a critical military or intelligence advantage. Those less sensitive military items that do not meet this standard are being systemically moved to the Department of Commerce's jurisdiction to allow them to be exported to our allies under less rigorous requirements. This prioritization allows us to better focus our limited resources on the items, destinations, end-users, and end-uses of greatest concern, while improving interoperability with allies and bolstering our defense industrial base by allowing our parts and components manufacturers—many small- and medium-sized busi-

nesses—to more easily support systems we have already entrusted to our allies and partners.

In my aircraft example, I can report that since our new controls went into effect for this category and the gas turbine engine category in October 2013, we have seen an 83 percent reduction in license applications for parts, components, accessories, attachments, and associated equipment. That means that most of those companies making or supplying those items, may no longer need to register, pay annual registration fees of at least \$2,250, pay per-license application fees as may be required, no per-purchase order licensing requirements, no agreement licenses, and generally no “see through” rule that requires subsequent Department of State licenses for exports, re-exports, or re-transfers for their items incorporated into other items, until those other items’ permanent importation into the United States or their ultimate destruction.

These reforms are only effective if we keep them current. Prior to ECR, the Department of State’s control list was largely static. As a result of ECR and as part of our business practices going forward, the Department of State has fundamentally changed how we do business.

First, we can best keep our list current in partnership with all involved in the system—our interagency partners, the Congress, our allies, and industry. It is our companies, large and small, that are our front line of defense. They must be able to clearly understand and implement our rules, if they are to be effective, to provide for our collective security. We have put in place a process so they can advise us on proposed changes that we are contemplating, to tell us if we got it right and equally important, if we got it wrong. They can also advise us as technology evolves in their sectors, so we can make continuous improvements to our list.

Thus far, we have published proposed rules for 18 of our 21 categories. We received significant public input on which we relied in part to publish final rules revising 15 categories that have now gone into effect. As a result, the Department has seen a 56 percent reduction in licenses for these categories. By our most recent tally, based on the volume of license applications received, the largest categories are categories I (Firearms), XII (night vision equipment), XI (Military Electronics) and VIII (Aircraft)/XIX (Space and Missile), with approximately 10,000; 8,000; 8,000 and 7,000 licenses respectively. Of these, Categories I and XII have not yet been published in final form. The revised categories with the largest volumes are Military Electronics and Aircraft.

Of the remaining six categories, we have published three for public comment. Two of these three, for Category XII (night vision equipment) and for Category XIV (toxicological agents), are our most complicated, and for the night vision equipment category, we are finalizing a second proposed rule to publish for public comment, to ensure that we get it right. We will then turn to preparing final rules for the other two. This leaves three categories that cover firearms, large guns, and ammunition to publish for public comment. We plan to turn to these categories once we complete our work on the current three that are in process. The Department is working

towards reviewing the remaining USML categories, and is committed to finalizing an initial review of the entire USML in 2016.

Going forward, we will routinely solicit public input on a category-by-category basis and, drawing upon our own interagency expertise and the public comments, will publish proposed rules to update each category. Earlier this week, on February 9, the Departments of State and Commerce published proposed rule of updated controls for the aircraft and gas turbine engine categories, with public comments due by March 25, 2016, and the public input period for four more categories concluded on December 6, 2015.

We will continue this transparent process going forward. The Arms Export Control Act requires the President to conduct a periodic review of the list and to remove those items that no longer warrant control. This requirement is fully consistent with regulatory reform, one of this committee's top priorities. The President has also provided further guidance in Executive order 13563 of 2011 on requirements for improving regulations and the regulatory review process.

Second, we are committed to continued enhanced engagement with the exporting community. All our notices, proposed rules, final rules, decision trees, and fact sheets are published on our website, as well as the Administration's central ECR site. We have also expanded our outreach efforts. In Fiscal Year 2015, we organized or participated in over 700 events, ranging from conferences and webinars to end-use monitoring checks and individual company visits. Our response team fielded over 19,000 phone calls and 22,000 e-mail inquiries. These actions were all done in addition to frequent meetings we hold with industry.

Third, we are changing how we manage our controls. Prior to ECR, each of the licensing agencies and the departments and agencies participating in the license application review process were all on independent information technology (IT) systems, or had no IT system at all. A key decision in phase one of the reform initiative was the selection of the secure Department of Defense internal licensing database, called "USXPORTS," as the single licensing database. Moving to this system would ensure that each licensing agency has full information on what the United States Government has collectively approved or denied for export to ensure that current and future licensing decisions are fully informed ones. The Department of State moved to USXPORTS for processing munitions export license applications in July 2013 and for considering Department of Commerce export license applications in October 2015.

To aid industry, particularly small- and medium-sized companies, in compliance efforts, the Departments of State, Commerce, and the Treasury deployed a consolidated screening list comprised of all three departments' various public screening lists that can be downloaded by exporters to self-screen parties to proposed transactions to facilitate compliance. When the initial list was deployed in December 2010, it contained over 24,000 line items of names, including variant spellings and pseudonyms, and was downloaded on average about 32,000 times per month. Since that time the Administration has deployed incremental improvements to this tool, in-

cluding automated updates any time a department makes a change to one of its lists, a “fuzzy logic” search function, and new options for downloading for use with existing screening programs. The list is now being used to conduct more than 100,000 screens per day.

These improvements were prerequisites to building a single portal through which exporters can submit requests and receive licenses and other guidance documents. Preliminary work on a single portal in 2010 was placed on hold pending completion of the licensing agencies’ transition to USXPORTS. The development of the single portal has now resumed, with the goal of deploying a smart single interface through which exporters can submit all requests and the system will guide them through the process to correctly route the request to the appropriate licensing authority. This should be of particularly benefit to small- and medium-sized companies.

To support these significant changes, the Department of State last year created and filled a new Chief Information Officer position within the Directorate of Defense Trade Controls to oversee the Department of State’s collaboration with these IT projects and to undertake a comprehensive review to modernization all aspects of the organization’s work. This effort is underway and, when completed, the core aspects of our business will be fully automated. Implementing these modern business tools and practices is anticipated to significantly improve our administration of the munitions export controls.

Fourth, the Department of State will continue to provide foreign policy oversight of our export control system for all controlled items whether administered by the Department of State or Commerce. The export of less sensitive military items moved to Commerce jurisdiction will continue to be guided by all aspects of the Conventional Arms Transfer policy including human rights reviews. These changes will also not diminish the key role that the Department of Defense plays in considering exports to ensure they are consistent with our national security interests. ECR is not a decontrol of these less sensitive military items but a prioritization of how the Executive Branch mitigates risks. Export controls are about risk mitigation.

Export Control Reform has improved how the export control community inside and outside the government interact, allows us to prioritize our controls to better focus our resources of the threats that matter most, improve interoperability with allies, and bolster the health and competitiveness of the U.S. defense industrial base, particularly small- and medium-sized companies. ECR began as an initiative and is now a process. That process could best be administered going forward by the eventual consolidation into a single export control agency with a single control list. This is the logical conclusion of the initiative.

We look forward to continue working with Congress in administering our new export control system. I look forward to your questions. Thank you.

Responses to Questions for the Record from Rep. King

Departments of State and Commerce

Q1. On what specific date does the administration plan on publishing the proposed rule to move US munitions List (USML) Categories I, II and III (guns and ammo) over? What is taking so long?

- Wasn't the interagency work completed more than three and a half years ago?
- Hasn't the interagency group recommended to the administration that it publish the agreed upon proposed rules in the Federal Register?
- How long did it take the other categories to move after the interagency work was completed?
- Why are these three Categories taking so long?
- During the House Small Business Committee hearing you testified that the reason Categories I-III have not moved forward is because of prioritization by Secretary Gates in 2010. However, is it not true that the rules for Categories I-III were ready to be published as early as 2012 but were delayed by the Administration? What was the reasoning for the delay? Was it for political purposes before the 2012 Presidential Election?

A1. In terms of priority in publishing rules, the Department's focus, as well as that of our interagency partners, is to finalize the significant number of proposed rule-makings currently in process, which include revisions to U.S. Munitions List (USML) Categories XII (lasers and sensors); XIV (biologics and toxins); and XIII (directed energy weapons). In addition, to focusing on the review of the USML, the Departments of State and Commerce are also focused on completing final rules harmonizing the definitions in the export control regulations administered by both departments. The schedule for publishing ECR rules is based on the ECR priorities, which include increasing interoperability with our allies while enhancing their ability to acquire the technologies needed to address our mutual security interests, reduce unwarranted regulatory burdens, improve the competitiveness of our defense industrial base, and establish an adaptive control system.

Although important, revisions to export controls on non-military firearms are not squarely within the scope of the national security objectives of the reform effort. So although policy discussions began and drafts were written in 2012, we suspended those efforts to turn our attention to Categories more central to our ECR reform objectives, as the export of firearms has a separate and unique set of export control considerations. Moreover, upon reflection and in calculating the time remaining in the second term, we decided to keep work going on an aggressive schedule to publish proposed and then final revisions on the remaining military categories so that the revisions on the military categories could be completed before the end of 2016.

The Departments thus decided to set work on proposed revisions to non-military firearms and ammunition categories aside in favor of completing the work on the military categories. The departments' plan was to re-engage on the review of Categories I, II, and III when it was clear that they would be able to finish the work on the military categories. When comparing the firearms rules to the length of time it takes on other categories the answer varies. Some of the categories were completed within 1 year and other categories (e.g., Category XII) has been subject to interagency work and policy discussion for at least five years. Based on the current schedule, our goal would be to finish the initial review of the ECR Categories in 2016.

Q2. In the consolidated Appropriations bill passed by Congress last year, the Bureau of Industry and Security (BIS) received an additional \$10 million over previously enacted funding levels, \$112,500,000. The House report that accompanied the Commerce, Justice, Science and related agencies (CJS) appropriations bill read, "The increase for the Bureau of Industry and Security (BIS), while not quite up to the President's request, will allow BIS to continue its efforts to protect national security while coping with an increased workload of export license applications." Anticipation of moving USML Categories I, II and III over to BIS was part of the expected increased workload the Appropriations Committee was referencing when it provided this increase. That has not happened, yet. These funds were provided for the current fiscal year. It appears that your department has willfully disregarded the guidelines put forth by the United States. Why haven't you used the increase in funds for their intended purposes?

Commerce Department Response:

A1. We respectfully disagree with the observation that the "department has willfully disregarded the guidelines put forth by the United States Congress." The Bureau is using the appropriated funds precisely as it described it would in its budget submission. Moreover, during the hearing, Members made it clear that such funds should be used to the extent possible for outreach and education of small and medium-sized companies, which the bureau fully intends to do in addition to its other requirements. These requirements include the processing of nearly twice as many license applications and related transactions that the Bureau has assumed responsibility for as a result of the reform effort.

As described above, there is a schedule for addressing the export controls on non-military firearms and such schedule follows the national security objectives of the Export Control Reform effort. With the funding that BIS has received, it will have the resources to continue its work on the reform effort, which includes a substantial increase in its licensing and related responsibilities and its education and outreach efforts.

State Department Response:

A2. I defer to the Department of Commerce, Bureau of Industry and Security on its use of appropriate funds.

